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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/729,432

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Ivan Sepetka

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EXAMINER

SEVERSON, RYAN J

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/729,432	<b>Applicant(s)</b> SEPETKA ET AL.	
	<b>Examiner</b> Ryan J. Severson	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 27-41, 43 and 44 is/are pending in the application.
- 4a) Of the above claim(s) 27-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-41, 43 and 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 38, 39 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallsten et al. (4,848,343).** Wallsten et al. disclose a device comprising a cover (2) that is a metal frame (see column 4, lines 25-28) capable of covering a neck of an aneurysm and a delivery catheter having an expandable element (30) and a sheath (5), the expandable element being at the distal end of the catheter (see figure 1), the cover being mounted around the expandable element (see figure 2), the sheath being retractable and having a fold (at 6) at its end. The delivery catheter has a lumen that receives a guidewire (see column 3, lines 41-43).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. **Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallsten et al. (4,848,343) in view of Fogarty et al. (6,110,198).** Wallsten et al. do not disclose an adhesive on the outer surface of the cover (stent). Attention is drawn to Fogarty et al., who teach it is known to use an adhesive to secure a graft to a stent (see column 9, lines 13-15) to prevent the stent from migrating downstream relative to the graft. Further, the use of a graft with a stent is known in the art for a multitude of reasons, for example preventing restenosis or excessive cellular ingrowth through the openings in the stent. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the adhesive and graft of Fogarty et al. with the stent of Wallsten et al. to allow a graft to be placed securely on the stent.

5. **Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallsten et al. (4,848,343) in view of Summers et al. (5,772,668).** Wallsten et al. do not disclose an impermeable portion on the cover. Attention is drawn to Summers et al., who teach it is known to include an impermeable portion on a frame (see column 3, lines 26-31 and 62-65) to be used at an aneurysm site to seal the aneurysm from further blood flow (see column 5, lines 58-61) to prevent the aneurysm from bursting. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the impermeable membrane of Summers et al. on the stent of Wallsten et al. to seal the aneurysm from further blood flow.

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6. **Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallsten et al. (4,848,343) in view of Hull (5,192,297).** Wallsten et al. do not disclose the sheath is made from PTFE. Attention is drawn to Hull, who teaches it is known in the art to make sheaths of PTFE (see column 2, lines 62-64) to provide a sheath that is durable yet flexible. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the sheath of Wallsten et al. of PTFE, as taught by Hull, to provide a sheath that is durable yet flexible.

### ***Response to Arguments***

7. Applicant's arguments filed 4/15/2010 have been fully considered but they are not persuasive.

8. As an initial matter, Examiner notes applicant argues that the limitations from claim 41 have been incorporated into claim 38. However, this is simply not the case. Claim 41 was not cancelled or amended, and the only amendment to claim 38 is clarifying that the expandable element is at the distal end of the delivery catheter (which Wallsten et al. clearly disclose).

9. Regarding applicant's arguments regarding the combination of Wallsten et al. and Summers et al., Examiner notes the claim includes the *functional* limitation "which covers the neck of the aneurysm." Examiner presumes applicant understands that the human body and portions thereof can not be claimed, and therefore this limitation is merely functional/intended use. Examiner holds that the prior art combination of Wallsten et al. and Summers et al. is capable of being placed at the neck of an aneurysm.

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10. Examiner further notes the claims do not require the cover having a frame and impermeable portion be configured to seal the aneurysm from the vessel, rather that the neck of the aneurysm is "covered". The term covered has a broader meaning that just to seal. As long as the prior art device is capable of spanning a neck of an aneurysm, the claim limitations are met.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan J. Severson whose telephone number is (571) 272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

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14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan J Severson/  
Examiner, Art Unit 3731  
7/1/10

/Anhtuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731  
7/1/10